Smiths Industries, Inc. *and* Local 330, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–35686

February 21, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On September 26, 1994, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

The judge found that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by refusing Union Steward Donald Dekker's request to go to the union office to process a grievance on ''union time'' as provided by the contract, and by limiting his grievance filing activity to before or after work or his breaktime. The judge further found that the Respondent violated Section 8(a)(3) and (1) by suspending Dekker for pursuing a grievance instead of remaining at his work station as ordered by his supervisor. In its exceptions, the Respondent contends, inter alia, that Dekker had no contractual right to go to the union office and that the record does not support the judge's finding that it was unlawfully motivated when it suspended Dekker. For the reasons given in the judge's decision, and for the additional reasons stated below, we find no merit in the Respondent's contentions.

The basic facts are undisputed and can be summarized as follows. As set forth in the judge's decision, article XII of the parties' contract provides that union stewards are to be paid for a certain amount of time spent per week in the handling of grievances (referred to by the parties as ''union time''). When a steward goes on union time, he runs his timecard through a scanner to record for pay and accounting purposes the time spent on union business.

On March 11, 1994, Dekker advised Supervisor Harold Mitchner that he was clocking off his job so that he could go to the union office to discuss the ''lugging grievance'' with his committee person. The lugging grievance concerned Mitchner's assignment of certain work to electronic operators rather than to another group of employees described as ''luggers.'' Mitchner told Dekker that he could not leave his work station for that purpose, and that he could attend to the matter during his breaks or before or after work. Despite Mitchner's order, Dekker punched his timecard and proceeded to the union office, where he discussed the lugging grievance with his union committee person. Later, Dekker was summoned to a disciplinary meeting where he was advised that he was suspended for 3 days because he refused to obey a reasonable work order.

Pursuant to article XII, section 1, of the parties' collective-bargaining agreement, union representatives engaged in grievance handling activities are required to advise their supervisors of the particular grievance they are handling and the location they are visiting, and to punch their timecards when they leave their work area. There is no dispute that Dekker properly followed these contractual provisions when he left his work area to investigate the lugging grievance.

Nevertheless, the Respondent contends that Dekker's conduct was not in conformity with the contract because under the ''clear and unambiguous'' language of article XII, section 3, paragraph 7,[3] union stewards may go to the union office only if a union committeeman has requested their presence to investigate a grievance. It is undisputed, the Respondent argues, that Dekker's committeeman had not requested his presence in the union office to investigate the lugging grievance.

The difficulty with this argument is that it accords no weight to the substantial evidence in the record supporting the judge's finding that ''there has been a longtime established practice in the workplace of stewards visiting the Union office on Union business.'' Under well-established precedent, that practice became ''an implied term and condition of employment by mutual consent of the parties.'' *Riverside Cement Co.*, 296 NLRB 840, 841 (1989). This is so even if, as the Respondent argues, ''the practice may have constituted a deviation from the letter of the parties' . . . agreement.'' *Sacramento Union*, 258 NLRB 1074, 1075 (1981). Accord: *Keystone Steel v. NLRB*, 41 F.3d 746 (D.C. Cir. 1994). Therefore, the judge correctly concluded that ''despite this provision of the contract, the practice governs and Dekker was not in violation of the contract by visiting the Union office.'' Accordingly, it follows that the judge properly held that the Respondent violated Section 8(a)(5) and (1) of the Act

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify par. 2(b) of the judge's recommended Order to correct an inadvertent error.

[3] This provision is set forth in sec. III,A of the judge's decision.

when it unilaterally changed the contractual provisions and practices that allowed for the processing of grievances consistent with Dekker's activity.

Concerning the judge's 8(a)(3) findings, it is also well established that ''an employer violates Section 8(a)(3) of the Act when he disciplines employees because of their status as shop stewards, . . . or because of their conduct as union stewards in processing grievances, policing the collective bargaining agreement, or for engaging in other activities as union steward.'' *Pacific Coast Utilities Service*, 238 NLRB 599, 606 (1978), enfd. 638 F.2d 73 (9th Cir. 1980).

Contrary to the Respondent's contention that evidence of unlawful motivation is lacking, the record shows that the Respondent's decision to suspend Dekker was motivated by the Respondent's desire to discourage Dekker from carrying out his grievance-related duties. At the hearing, Mitchner testified that he could see no ''reason for an investigation since there had been enough discussion about the subject.'' He further testified that he could not understand why it was necessary for Dekker to go to the union office at that point. By Mitchner's own admission, Dekker was ordered not to engage in the processing of the grievance because Mitchner believed that he had made a valid assignment of the lugging work, and that no further investigation was necessary. Thus, it is clear that Mitchner harbored particular animus towards Dekker's pursuit of the lugging grievance.

Based on this evidence, we conclude that the Respondent was unlawfully motivated when it suspended Dekker for engaging in protected grievance-related activities, and that the General Counsel has established a prima facie case of discrimination.[4] We further find that the Respondent has failed to meet its burden of establishing that Dekker would have been disciplined even in the absence of his protected conduct. Indeed, as discussed above, the record affirmatively shows that other union stewards have frequently left their work stations to visit the union office on union time to handle grievances without being disciplined. In any event, Mitchner repeatedly stated, contrary to the clear provisions of the collective-bargaining agreement, that Dekker was required to attend to the grievance during his breaks or before or after work. At no time did Mitchner state that his primary concern with Dekker's conduct was the fact that he was going to the union office without being asked by a committeeman. Accordingly, the Respondent's reliance on this asserted contractual requirement is clearly pretextual. Thus, we adopt the judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act.

[4] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Smiths Industries, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

''(b) Remove from its files any reference to the suspension of Donald Dekker, and notify him in writing that this has been done and that evidence of this unlawful suspension will not be used as a basis for future personnel action against him.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT suspend union steward employees for engaging in grievance-filing activity on behalf of unit employees.

WE WILL NOT refuse requests by union steward employees to process grievances on union time as provided in the current collective-bargaining agreement between the parties.

WE WILL NOT limit the grievance-filing activities of union steward employees to before or after their worktime or on breaktime.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole Donald Dekker for any loss of pay he may have suffered as a result of the discrimination practiced against him.

WE WILL remove from our files any reference to the suspension of Donald Dekker and notify him in writing that this has been done and that evidence of this unlawful suspension will not be used as a basis for future personnel action against him.

WE WILL allow requests by union steward employees to process grievances on union time as provided in the current collective-bargaining agreement between the parties.

SMITHS INDUSTRIES, INC.

Howard M. Dodd, Esq., for the General Counsel.
Peter J. Kok, Esq., of Grand Rapids, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. Upon charges filed by Local 330, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union or the Charging Party), a complaint and notice of hearing issued on May 26, 1994, alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act by refusing Steward Donald Dekker's request to process a grievance on union time, limiting Dekker's grievance filing activity to before or on after work or breaktime, and refusing to grant Dekker access to union time. The complaint further alleges that Respondent violated Section 8(a)(1) and (3) of the Act by suspending Dekker because of his grievance filing activities. Pursuant to notice, the case was heard before me on July 21, 1994. Briefs have been timely filed by the General Counsel and Respondent, which have been duly considered.[1]

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

Employer is engaged in the manufacture and retail sale of aircraft controls and instrumentation. During the calendar year ending December 31, 1993, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 and sold and shipped from its Grand Rapids, Michigan facility goods valued in excess of $50,000 directly to points outside the State of Michigan. The complaint alleges, the answer admits, and I find that the Employer is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The production and maintenance employees have been represented since 1949 under a series of collective-bargaining agreements with several owners, including Respondent who assumed ownership in 1987.

In 1993, negotiations for a new contract were unsuccessful and the contract expired on July 16, 1993. The parties operated under an extension of the contract until August 30, 1993, at which time the Respondent implemented its final contract proposal. It was not until June 1994 that a new contract was agreed upon with effective dates from June 4, 1994,[2] to August 30, 1996. The parties stipulated that article XII and the rules of conduct contain certain contract provisions relevant to the issues in this case and remained unchanged under the implemented proposal and in the new contract. Article XII reads in relevant part:

ARTICLE XII

UNION REPRESENTATIVES AND PAYMENT OF UNION REPRESENTATIVES

Section 1

1. All Union representatives who are allowed time for the purpose of handling grievances that arise under their jurisdiction, or for attending Shop Committee meetings, will punch the time card provided after advising their Supervisor they are leaving their work station for the purpose of handling a grievance and advising him of the specific grievance and location to be visited, or committee meeting, and punch the card back in when he is ready to return to work, advising the Supervisor he is again available for work. Prior to entering an area other than this own work area, the Union representative will contact the Foreman of the area and advise him of the specific grievance and the employee or employees whom he will contact. Time spent by Union representatives with management at management's request will not be counted against the Union representative as part of his allowable time. Time spent by Union representatives must be restricted to straight time hours, unless a specific grievance arises pertaining to employees and work during the overtime hours.

. . . .

4. A Steward will be paid for a maximum of two (2) hours a day, averaged over the week, for time properly spent in handling grievances within his area. If there are more than sixty (60) employees under the Steward's jurisdiction, the allowable time for handling grievances within his area will be increased to three (3) hours a day.

. . . .

7. The Company will provide space, telephone, and furnishings for a Union Work Center (office) within the Plant for authorized personnel only (Shop Committee and President), the only exception would be when a Committeeman requests Stewards or employees to investigate a grievance. The Committeeman will make this request through the Stewards' or employees' Supervisor, advising the Supervisor of the specific grievance. The location of such Work Center shall be determined by the Labor Relations Manager after consultation with the Chairman of the Shop Committee.

Relevant portions of the ''Rules of Conduct'' read:

15. Refusal to accept a reasonable assignment or workplace location assigned by Supervisor. . . .

NOTE: . . . .

1. Whenever the work assigned is within the employee's job classification, he shall accept such work and perform the same with the regular skill and speed. If he refuses to accept and to perform such work, he shall be deemed to be in violation of *Shop Rule* No. 15 and

[1] No opposition thereto having been filed, Respondent's submission of an ''Errata Sheet'' dated September 2, 1994, correcting errors in the transcript is hereby accepted into the record.

[2] All dates refer to 1994 unless otherwise indicated.

the stated penalty of the present Labor Agreement shall apply.[3]

. . . .

In the event of confliction between provisions of the Labor Agreement and the Shop Rules, the provisions of the Labor Agreement will govern.

In mid-February 1994, Harold Mitchner, a supervisor, instructed some of the electronic operators that after finishing their work on the aircraft equipment assigned to them, they were to move that product themselves to the next department in the process. It was at about this time that one of the operators complained that this work was not unit work and should be done by another group of employees described as luggers. Sometime later, the union steward, Donald Dekker, was called in and Mitchner explained to him that this work assignment was permitted under a letter of agreement between the Union and the Company dated July 13, 1993, shortly before the expiration of the contract, and Dekker agreed to check it out. Thereafter, Dekker went to see Kenneth Dykhuis, the union committee person, at the union office.

Dykhuis confirmed that a letter of agreement did exist, but that it was the intention of the parties, although not expressly provided, that the agreement be applied only in emergency situations for high priority or ''hot'' work.[4] Later, Dekker spoke again to Mitchner and told him what he had been told by Dykhuis. When Mitchner maintained his position, he was formally advised by Dekker that they were at the first or verbal step of the grievance procedure.[5]

Sometime later, on March 10, Dekker and Mitchner met again concerning the ''lugger'' grievance. It was at this meeting that Dekker told Mitchner that he was going to log out (''wand off'') to go on union time so that he could go to the union office to handle the lugger grievance.[6] Mitchner told Dekker that he could not do that and that if he wanted to write up a grievance, he should do so immediately and return to work at his job station since this was the correct procedure. Dekker expressed his opposition to Mitchner's refusal to allow him to go to the union office, nonetheless, Dekker returned to work at this time.

On the morning of March 11, Dekker went to see Mitchner at this office. Once again, Dekker told Mitchner that in connection with the lugger grievance, he was ''wanding'' off in order to visit the union office to discuss the grievance with his committee person, Dykhuis. Mitchner took the same position he had taken the day before, telling Dekker he was not permitted to leave his work for that purpose. He told Dekker that he could attend to the matter during his breaks or before or after work. Mitchner also gave him the option of writing up the grievance at his workstation, but made it clear that he was not to leave the job to take up the grievance with his committee person at the union office.

Dekker complained that Mitchner was interfering with his duties as shop steward, and despite Mitchner's instructions, he wanded off, left the work area and went to the union office where he met with Dykhuis. He asked Dykhuis to see the letter agreement which Mitchner was contending allowed union employees to do work normally done by luggers. After reading the agreement, Dekker questioned Dykhuis about the effect of the agreement and Dykhuis again told him that it was not the intention of the signatories that unit employees do work normally done by luggers except in emergency or priority situations. Dekker, apparently accepting this interpretation, returned to his work area about one-half hour later with the intention of filing a grievance with Mitchner over the matter.

To this end, Dekker went to Mitchner's office, but as he was presenting the lugging grievance, Mitchner told him that there was a more important matter to attend to and he summoned Dykhuis to his office for what was described as a disciplinary meeting. Also in attendance was Tom Saunders, a supervisor representing the Company. Mitchner then asked Dekker if he had been ordered not to go to the union office. Dekker conceded that he had been ordered by Mitchner not to go and that he had gone anyway. Dekker explained that he was fed up doing union business on his work breaks and that the contract did not prohibit him from going to the union office on union time to look into grievances.

At this time, Mitchner gave Dekker a previously drafted disciplinary action notice reading: ''VIOLATION—SR [SHOP RULE] 15—REFUSAL TO ACCEPT A REASONABLE WORK ASSIGNMENT OR WORK PLACE LOCATION ASSIGNED BY SUPERVISOR—1ST INFRACTION.'' The notice also provided for a 3-day suspension beginning immediately and ending on March 16. The meeting ended with Dekker being escorted off the premises by Mitchner.

With respect to the matter of visitations on union time to the union office, several of the stewards testified that it was not unusual for them to visit the union office at the plant for a variety of reasons and that they had never been prohibited from making such visits. For example, Arnold Kreft Krpse, longtime (30 years) steward, testified that whenever he needed time for union business, he simply advised the supervisor that he was going on union time and took care of the business, which often involved visits to the union office as often as once or twice a day. Whenever he returned from his union business to resume his work, he advised his supervisor. Robert Wise, union vice president and former steward, testified

[3] Shop rule 15 also provides for warning notice and 3-day suspension for a first offense and discharge for a second offense.

[4] The agreement, initialed by Dykhuis on July 13, 1993, reads:

GENERAL TOPICS 1993 ITEM #1

FROM OUR DISCUSSION ON A NEW LABOR AGREEMENT. IT IS UNDERSTOOD THAT IN ORDER TO REDUCE CYCLE TIME AND IN AN EFFORT TO ELIMINATE THE MISROUTING OF PRODUCT, THE COMPANY AND UNION AGREE:

EMPLOYEES MAY MOVE PRODUCT, UNDER THE DIRECTION OF THE SUPERVISOR, BETWEEN ADJACENT DEPARTMENTS WITHIN THE MANUFACTURING BUILDING.

[5] The grievance procedures of the expired contract were still in effect, but without the arbitration provisions, as a part of the company proposal being implemented at this time.

[6] It appears that when a steward goes on or off union time, he runs his timecard through a scanner to record for pay and accounting purposes the time spent on union business so that he can be compensated for that time as provided in art. XII, sec. 4, and so that customers are not billed for union time.

that in the course of his duties as steward, as often as once or twice a week, he would visit the union office on union business. Whenever he left work on union business, he advised his supervisor that he needed to leave on union time and told the supervisor the reason for leaving. Thereafter, he scanned off, did the union business, and then scanned back on, reporting to his supervisor. Wise testified that this was his practice under about six different supervisors and that he was never prohibited from visiting the union office. Donald Thompson, another steward, testified that because he was new to the position it was often necessary for him to visit the union office for advice on various union matters, sometimes as often as four or five times a week. At these times, he simply told his supervisor that he needed to see his union committee person, scanned out to go on union time, did the business and upon his return to work, scanned back in again.

B. *Discussion and Analysis*

With respect to the issue of whether or not Respondent violated Section 8(a)(3) by suspending Dekker, the General Counsel contends that Dekker was suspended for engaging in the protected concerted activity of processing a grievance. Respondent contends that Dekker was suspended for refusing to obey an order from his supervisor.

The basic facts are not in dispute. On March 10, when Dekker told Mitchner that he was going to the union office to investigate the lugger grievance, he was told by Mitchner that he could not leave for that purpose and Dekker went back to work. On March 11, Dekker again told Mitchner that he was going to the union office to investigate the lugger grievance. He was told that he could write up the grievance immediately but could not go to the union office and was ordered to return to his work station. However, this time, Dekker disobeyed Mitchner, wanded off, and went to the union office anyway.

As set out above, the contract provides for stewards to handle grievances on union time. The contract further provides that stewards be paid a maximum of either 2 or 3 hours per day averaged over the week for the handling of grievances. Under the terms of the contract, the process is set in motion by the steward ''advising'' his supervisor of the specific grievances and location to be visited and punching in and out as the contract required. In my opinion, article XII, sections 1 and 2(4) of the contract, provide for Dekker to investigate the lugging grievance on union time, and Dekker acted in accordance with those provisions.

Respondent, however, contends that under article XII, section 7, only ''authorized personnel'' (shop committee persons and president) were allowed to visit the union office. However, in my opinion, this contract provision does not prohibit such visits as Dekker made. The testimony of those stewards who testified at the hearing fully supports the conclusion that it has been the practice for stewards to visit the union office frequently and routinely for various union-related purposes. In view of the fact that there has been a longtime established practice in the workplace of stewards visiting the union office on union business, I conclude that despite this provision of the contract, the practice governs and Dekker was not in violation of the contract by visiting the union office and he was engaged in protected union activity.

Respondent also contends that Dekker's 3-day suspension was justified since Dekker, in refusing Mitchner's order to return to work was in violation of shop rule 15 of the rules of conduct. I do not agree. In the first place, a careful reading of shop rule 15 persuades me that it was intended to apply to disagreements over *work assignments* and not to stewards engaged in the investigation or processing of grievance. In this case, Dekker was acting in conformity with his responsibilities as a steward to handle a grievance. Any order preventing Dekker from exercising that right cannot be construed as a ''reasonable work assignment.''

I also note that the parties themselves have provided for conflicts which might arise between the rules of conduct and the labor agreement itself by providing, as set out above, that the labor agreement shall govern. In the instant case, even assuming the existence of a conflict between shop rule 15 and the labor agreement, since I have concluded that Dekker was properly exercising a steward's contractual right to handle a grievance under the labor agreement, and that right should prevail.

Respondent also argues that a shop committee newsletter of June 25, 1980, somehow supports the position that Dekker was obliged to obey Mitchner's order to return to work. Basically, this letter was a shop committee interpretation of an unnamed Supreme Court ruling and a reiteration of shop rule 15, discussed above. It is not probative evidence and provides no justification for Mitchner's action in suspending Dekker. Likewise, a prior 1984 arbitration decision submitted by Respondent, along with documents enforcing it, purporting to have resolved the same issue, actually provides no probative evidentiary support for the position taken by Respondent in the instant case, since the facts and the issue, arising under the National Labor Relations Act, are dissimilar.

In summary, I conclude that Dekker was engaged in protected concerted activity and acting in conformity with established practice under the contract. I further conclude that Mitchner, in suspending Dekker for pursuing that grievance instead of returning to work as ordered, discriminated against Dekker in violation of Section 8(a)(3) of the Act.

I further conclude that on March 10 and 11, 1994, Respondent discriminated against Dekker by refusing to grant him access to union time for the purpose of handling a grievance. Respondent also discriminated against Dekker by not allowing him to utilize union time for processing a grievance as provided under the contract. In addition, by this same conduct, Respondent violated Section 8(a)(5) of the Act since at the time of the violation set out above, the parties were operating under contract provisions and practices which allowed for the processing of grievances consistent with Dekker's activity.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III above, occurring in connection with Respondent Employer's operations described in section I above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices, I recommend that it cease and desist therefrom and take certain action designed to effectuate the policies of the Act. I have found that Respondent suspended Donald Dekker for reasons which offend the provisions of Section 8(a)(3) and (1) of the Act. I shall therefore recommend that Respondent make him whole for any loss of pay he may have suffered as a result of the discrimination practiced against him. All backpay and reimbursement provided herein, with interest, shall be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

CONCLUSIONS OF LAW

1. Respondent Smiths Industries, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 330, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at Respondent's Grand Rapids facility: but excluding all Methods, Time Study, Time Keeping, Engineering, Drafting, Tool Designing, Expediting, Sales, Field Service, Office Clerical, Plant Protection, Foremen, Supervisory Electronic Technicians, Test Lab Personnel, Engineering Gyro Lab Personnel, Material Lab Personnel, Quality Control, All Salaried Personnel and all others with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

4. At all times material, the Union has been, and is now, the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The Union and Respondent were parties to a collective-bargaining agreement covering the above-described unit which expired on July 16, 1993, and extended to August 30, 1993, at which time Respondent implemented its last proposal, continuing in effect various provisions of the expired contract, including article XII and the rules of conduct which were later incorporated into the collective-bargaining agreement reached by the parties effective June 4, 1994, to August 30, 1996.

6. By suspending Steward Donald Dekker for engaging in union grievance filing activity, Respondent violated Section 8(a)(3) and (1) of the Act.

7. By refusing Steward Donald Dekker's request to process grievances on union time and by limiting Donald Decker's grievance-filing activity to before or after work or on his breaktime, Respondent violated Section 8(a)(3), (5), and (1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Smiths Industries, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending union steward employees for engaging in grievance-filing activity on behalf of unit employees.

(b) Refusing requests by union steward employees to process grievances on union time as provided in the current collective-bargaining agreement between the parties.

(c) Limiting the grievance filing activities of union steward employees to before or after their worktime or on breaktime.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Donald Dekker for any loss of pay he may have suffered as a result of the discrimination practiced against him in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the suspension of Donald Dekker, and notify him in writing that this has been and that evidence of this unlawful suspension will not be used as a basis for future personnel action against him.

(c) Allow requests by union steward employees to process grievances on union time as provided in the current collective-bargaining agreement between the parties.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amount of backpay due herein.

(e) Post at its Grand Rapids, Michigan facility copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''